

Appl. No. 10/759,505  
Amdt dated July 28, 2008  
Reply to Office Action of January 28, 2008  
Att. Docket No.: 1279-400C1

Filing date: January 16, 2004  
Applicant Name: Bazan et al.  
Examiner: Camie S. Thompson  
Art Unit: 1774

### REMARKS/ARGUMENTS

Claims 4-5, 12-14, 18-19, and 23 have been canceled.

The attorney of record would like to thank the Examiner for calling the attorney of record, Richard Tun, on July 28, 2008 to discuss whether Applicant was allowing the application to go abandon.

In the instant office action, the Examiner acknowledged that claims 15, 20-22 were to be allowed. However, noting that claim 22 is a dependent claim, Applicant has now amended claim 22 into an independent claim, to include all the limitations of its base claim, claim 14. All remaining rejected claims have been canceled. In this regard, Applicant believes that the application is in condition for allowance, and respectfully submits section 714.13 II of the MPEP to support their position. Section 714.13 II of the MPEP states:

#### II. ENTRY NOT A MATTER OF RIGHT

It should be kept in mind that applicant cannot, as a matter of right, amend any finally rejected claims, add new claims after a final rejection (see 37 CFR 1.116) or reinstate previously canceled claims.

Except where an amendment merely cancels claims, adopts examiner suggestions, removes issues for appeal, or in some other way requires only a cursory review by the examiner, compliance with the requirement of a showing under 37 CFR 1.116(b)(3) is expected in all amendments after final rejection. An affidavit or other evidence filed after a final rejection, but before or on the same date of filing an appeal, may be entered upon a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented in compliance with 37 CFR 1.116(e). See 37 CFR 41.33 and MPEP § 1206 for information on affidavit or other evidence filed after appeal. Failure to properly reply under 37 CFR 1.113 to the final rejection results in abandonment. A reply under 37 CFR 1.113 is limited to:

- (A) an amendment complying with 37 CFR 1.116;
- (B) a Notice of Appeal (and appeal fee); or

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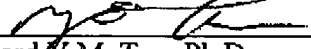
(C) a request for continued examination (RCE) filed under 37 CFR 1.114 with a submission (i.e., an amendment that meets the reply requirement of 37 CFR 1.111) and the fee set forth in 37 CFR 1.17(e). RCE practice under 37 CFR 1.114 does not apply to utility or plant patent applications filed before June 8, 1995 and design applications." (Emphasis added).

A Notice of Appeal with the required fee is attached.

The Commissioner is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 50-3881.

Dated: July 28, 2008

Respectfully submitted,

By   
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